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WPS Energy Services, Inc. )

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Petition for Certification as an  
Alternative Retail Electric Supplier

CHIEF CLERK'S OFFICE

Docket No. 00-0199

**PETITION FOR REHEARING OF PEOPLES ENERGY SERVICES CORPORATION**

**To the Commission:**

Pursuant to 83 Illinois Administrative Code Section 200.880, Peoples Energy Services Corporation ("PE Services"), by one of its attorneys, Gerard T. Fox, hereby petitions this Commission to grant rehearing in the above-entitled cause. Specifically, PE Services requests that the Commission rehear this matter and revoke the certification of WPS Energy Services, Inc. ("WPS") as an Alternative Retail Electric Supplier ("ARES") due to its failure to meet the reciprocity requirements of the Public Utilities Act (the "Act") set forth in Section 16-115 (d) (5). In support of this petition, PE Services respectfully states as follows:

1. PE Services is a corporation organized and existing under the laws of the State of Illinois and is principally in the business of providing energy services to retail customers. This currently includes sales of electricity and of natural gas and natural gas management services to Illinois commercial and industrial end users. The Commission certified PE Services as an ARES, as that term is defined in Section 16-102 of the Public Utilities Act, in Docket 99-0432 on September 14, 1999.

2. On March 2, 2000, WPS filed its application for certification as an ARES. PE Services petitioned for leave to intervene in that proceeding and that petition was granted. However, due to the Commission's interpretation of the language of Section

16-115 (d) of the Public Utilities Act, which will be discussed hereinafter, PE Services was not allowed to offer evidence in this proceeding. Accordingly, by order dated April 18, 2000, and served on April 19, 2000, the Commission granted WPS' application and WPS was certified as an ARES. The findings of that Order are not supported by substantial evidence and are inconsistent with the Public Utilities Act.

3. Section 16-115 (d) (5) of the Act applies to applicants which have electric utility affiliates. Generally, under that section, the Commission can not grant an application for ARES certification to an entity that has an electric utility affiliate operating in a jurisdiction which is not on the same level of open access as Illinois. WPS has electric utility affiliates operating in Wisconsin and Michigan. Moreover, Wisconsin and Michigan are not open to electric retail competition.

4. Section 16-115 (d) (5) makes available an exception to the general rule that the Commission can not grant ARES certification to an affiliate of electric utilities operating in states that do not allow retail competition. The exception allows the Commission to grant certification where the applicant demonstrates that the Illinois electric utilities in whose service territories it seeks to compete cannot physically and economically deliver electric power and energy into the service territories of the applicant's electric utility affiliates.

5. The Commission, in its Order, correctly found that WPS had not demonstrated that electric power and energy could not be physically delivered to the service territory of its Wisconsin electric utility affiliate (Order, p. 9).

6. The Commission, however, erred in finding that WPS had demonstrated that electric power and energy could not be economically delivered to the service territory of its Wisconsin electric utility affiliate (Order, p. 9). That finding is against the manifest weight of the evidence and not supported by substantial evidence.

7. Both the Petition for Leave to Intervene of PE Services and the Comments of Commonwealth Edison Company, another intervenor in this proceeding, demonstrated the weaknesses of WPS' arguments that electric power and energy could not be economically delivered into the service territory of its Wisconsin electric utility affiliate. However, because of its interpretation of Section 16-115 (d) of the Public Utilities Act, the Commission, in its Order, only relied on the information provided by WPS.

8. Section 16-115 (d) of the Public Utilities Act states that the Commission is to grant an application for a certificate of service authority if it makes the findings set forth in that subsection "based on the verified application and such other information as the applicant may submit". The Commission apparently interprets this to mean that it must ignore any information except that provided by WPS. Accordingly, the Commission found that it would not be economical, based on the three methods of analysis presented by WPS, for the Illinois utilities, in whose service territories WPS seeks certification, to deliver electric power and energy to the service territories of WPS' electric utility affiliates. Based on this finding, the Commission held that the reciprocity provisions of Section 16-115 (d) should not preclude WPS from receiving the ARES certificate it requested in this proceeding. The Commission's finding and resulting holding were erroneous because WPS' self-serving showings do not constitute the substantial evidence necessary to support a Commission Order.

9. The Commission, in its deliberations on this matter, acknowledged the dilemma caused by relying solely on the information promised by WPS. However, the Commission did not deny the Application, instead the Commission indicated that it would grant the certificate requested by WPS, with the expectation that, on rehearing, the Commission would be able to utilize information other than that presented by WPS

because it was only limited to utilizing the information of WPS during the part of the proceeding leading up to its Order. However, even accepting this as true, the Commission, in granting WPS' application, actually ignored information provided by WPS that showed that an Illinois electric utility can economically deliver electric energy and power to the service territories of WPS' electric utility affiliates. WPS' own response to the Hearing Examiner's Ruling demonstrates that WPS' electric utility affiliate has made substantial wholesale purchases from ComEd (Response, Ex. 4). Again, this shows that the Commission's Order is not supported by substantial evidence.

10. The Commission should grant rehearing. On rehearing, the Commission should consider evidence from all interested parties and make a decision based on the total record.


11. On rehearing, the Commission should also consider the policy reasons for the existence of the reciprocity provisions in the Public Utilities Act. For competition to thrive, there must be an ability to compete throughout the region, not just in one state. There will be no impetus for neighboring states such as Wisconsin, Michigan and Indiana to open their states to competition if Wisconsin, Michigan and Indiana companies can compete in Illinois, but Illinois companies cannot compete in their states. The reciprocity provisions of the Act were put there for a reason by the General Assembly. Granting WPS' application, based on the inadequate showings made by WPS, made those reciprocity provisions meaningless.

**WHEREFORE**, PE Services prays that the Commission grant rehearing in this proceeding.

Dated at Chicago, Illinois this 17<sup>th</sup> day of May, 2000.

Respectfully submitted,

**PEOPLES ENERGY SERVICES CORPORATION**

By   
**Gerard T. Fox**  
**An Attorney for**  
**Peoples Energy Services Corporation**

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**VERIFICATION**

I, Gerard T. Fox, being first duly sworn, depose and say that I am an attorney for Peoples Energy Services Corporation, that I have read the foregoing Petition for Rehearing of Peoples Energy Services Corporation by me subscribed, and I know the contents thereof, and that the statements therein contained are true to the best of my knowledge, information and belief.

By Gerard T. Fox  
Gerard T. Fox  
An Attorney for  
Peoples Energy Services Corporation

**SUBSCRIBED** and **SWORN** to before me  
This 17<sup>th</sup> day of May 2000

Ann T. Browne  
Notary Public



**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the Petition for Rehearing of Peoples Energy Services Corporation by placing a copy thereof in the United States mail with first class postage affixed, addressed to each of the parties of record in Ill.C.C. Docket No. 00-0199.

Dated at Chicago, Illinois this 17<sup>th</sup> day of May 2000.

By Gerard T. Fox  
Gerard T. Fox  
An Attorney for  
Peoples Energy Services Corporation